

Comptroller General  
of the United States  
Washington, D.C. 20548

P. Williams  
145211

## Decision

**Matter of:** Peterson Builders, Inc.

**File:** B-244614

**Date:** November 1, 1991

Maurice J. Mountain, Esq., Barton, Mountain & Tolle, for the protester.

Marcus B. Slater, Jr., Esq., Fort & Schlefer, for Bollinger Machine Shop & Shipyard, Inc., an interested party.

Timothy A. Chenault, Esq., United States Coast Guard, Department of Transportation, for the agency.

Paula A. Williams, Esq., Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that contracting agency improperly evaluated protester's proposal is denied where protester's proposal failed to meet all of the solicitation requirements.

2. Protest challenging solicitation specifications is untimely where alleged impropriety was apparent from the face of the solicitation prior to the time set for submission of proposals and protest was not filed until after that time.

3. Protester's creation of an alternative evaluation system which was not contemplated by the RFP and which is inconsistent with the relative importance of evaluation factors established in the RFP provides no basis for questioning the evaluation scheme applied by the agency.

### DECISION

Peterson Builders, Inc. (PBI) protests the award of three contracts by the United States Coast Guard under request for proposals (RFP) No. DTCG23-90-R-30024. This RFP made up Phase One of a three-phase acquisition project to replace the Coast Guard's fleet of ocean-going buoy tenders. PBI contends that the relatively low evaluation of its proposal was improper because the agency failed to accurately

recognize the actual merits of its proposal, and the evaluation scheme applied by the agency failed to reflect the relative equality or near-equality between its proposal and those of the successful offerors.

We deny the protest in part and dismiss it in part.

#### BACKGROUND

On May 16, 1990, the Coast Guard issued this RFP seeking fixed-price proposals to develop an overall ship design for a new class of ocean-going buoy tenders. The principal mission of the ship being designed is to deploy, service, and retrieve the large navigational buoys that mark coastal shipping lanes. The solicitation contemplated award of "a limited number" of contracts to develop the contract design for the ships to be acquired. Awardees under this solicitation (Phase One of the acquisition project) will develop the contract design submitted as part of these proposals. Phase Two of the acquisition will consist of a single contract award to one of the Phase One contractors to provide detailed design and construction of the lead ship for the buoy tender fleet, with options for up to four additional ships. Phase Three will be full and open competition of the Phase Two detailed design for the full production run for the remainder of the fleet.

The RFP contained all contract terms and conditions for both Phase One and Phase Two of the acquisition project and provided that proposals would be evaluated against identified factors based on two criteria: (1) understanding of the requirements, and (2) soundness of approach. The RFP provided that in assessing an offeror's understanding of the requirements (criterion 1), the agency would consider the offeror's statements regarding how the requirements under each evaluation factor would be met as well as the offeror's explanations regarding cost and technical benefits of RFP requirements that were exceeded. Similarly, the RFP provided that in evaluating an offeror's soundness of approach (criterion 2), the agency would assess the offeror's understanding of the technologies, techniques, and processes necessary to satisfy the RFP requirements and the demonstrated producibility of the proposed design in terms of feasibility and risk assessment.

The Coast Guard used a color rating and risk assessment scheme for evaluating technical and management proposals. "Blue" was considered "exceptional" and was defined as exceeding specified performance or capability in a way beneficial to the Coast Guard with a high probability of success and no significant weakness. "Green" was considered "acceptable" and was defined as meeting standards with good probability of success and weaknesses which could be readily

corrected. "Yellow" was considered "marginal" and was defined as failing to meet standards, with low probability of success and significant but correctable deficiencies. "Red" was considered "unacceptable."

The RFP listed the evaluation factors in descending order of importance<sup>1</sup> and provided that there were two types of evaluated factors: the "E" type factor which would be evaluated and rated and the "A" type factor which would be assessed as either acceptable or unacceptable. The evaluation factors, with subfactors, were as follows:

<u>Technical Factors</u>	<u>Type</u>
1. Stationkeeping	E
2. Buoy Handling	E
3. Seakeeping	E
4. Survivability/Stability	E
5. Arrangements	E
6. Ship System Integration	E
7. Design Plan	E

Design Plan Subfactors:

- a. Schedule
- b. Model Testing
- c. Resource Allocation

8. Other COR Requirements	A
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Other COR Requirements Subfactors:

- a. Speed
- b. Oil Recovery
- c. Icebreaking
- d. ABS Classification

Management Factors

1. Integrated Logistics Support	E
2. Management Capability/Scheduling	E
3. Weight Control	E
4. Quality Assurance	E

The RFP provided that technical and management factors were more important than price and stated that, while price proposals would not be scored, they would be evaluated for reasonableness, realism, and completeness.

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<sup>1</sup>Subfactors within factors were identified and stated to be of equal importance.

On October 10, six offerors, including FBI, submitted proposals responding to the RFP. The source evaluation board (SEB) with the assistance of a technical evaluation team (TET), conducted a preliminary review of the proposals. During the review, the TET prepared a listing of "strong points," "shortcomings," and "risk assessments," and identified areas in the proposals which were deficient or where clarifications were necessary. By letter dated December 3, the agency sought corrections and clarifications of each offeror's proposal. In the letter sent to FBI, the agency requested additional information regarding the following evaluation factors: stationkeeping, buoy handling, survivability/stability, arrangements, ship system integration, design plan, and management capability/scheduling.

By letter dated December 19, the agency extended the date for submission of clarification responses and invited each offeror to make an oral presentation of its proposal, followed by a question-and-answer session. The agency subsequently received clarification responses from all six firms; each firm also made an oral presentation to the agency. The TET then conducted an evaluation of the offerors' revised proposals using the same evaluation methodology previously described. The TET's evaluation of FBI's revised proposal resulted in the following ratings.

<u>Evaluation Factor</u>	<u>Understanding of Requirements</u>	<u>Soundness of Approach</u>
Stationkeeping	Green	Yellow
Buoy Handling	Green	Green
Seakeeping	Green	Green
Survivability/ Stability	Yellow	Yellow
Arrangements	Yellow	Yellow
Ship System Integration	Green	Yellow
Design Plan	Green	Green

Upon receipt of the TET's final evaluation report, the SEB reviewed the findings and recommended to the contracting officer that two proposals that had been rated technically unacceptable be excluded from the final competitive range. The contracting officer accepted the SEB's recommendation and established a final competitive range consisting of FBI and three other offerors.

By letter dated March 8, 1991, the agency advised the four offerors that their proposals were included in the final competitive range. Face-to-face negotiations and a visit to the offerors' facilities were scheduled and the contracting officer forwarded a list of topics for discussion to each offeror.<sup>2</sup> Following completion of discussions, best and final offers (BAFOs) were submitted and evaluated. PBI's BAFO did not result in a change in its evaluation ratings and, of the four competitive range offerors, PBI was ranked fourth.

On May 24, after considering the final SEB report, the source selection official selected the three other offerors for contract awards and, on May 28, awarded Phase One contracts to those firms. On June 12, the agency conducted a debriefing with PBI representatives, and this protest followed.

#### EVALUATION OF PROPOSALS

PBI first protests that the agency's evaluation of its proposal failed to accurately reflect its actual merits. Specifically, PBI argues that the agency erred in rating its proposal "yellow" (marginal) with regard to "stationkeeping" and "arrangements," and that its proposal should have been rated "blue" (exceptional) under certain other evaluation factors. PBI maintains that if the agency had performed a proper evaluation, its proposal would have achieved a higher overall rating than at least one of the three successful offerors.

The evaluation and scoring of technical proposals is the function of the contracting agency and in considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the evaluation was fair, reasonable, and consistent with the stated evaluation criteria. KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447. We have reviewed the extensive record presented by the parties and conclude that the agency reasonably evaluated PBI's proposal with regard to each of the disputed evaluation factors.

##### 1. Stationkeeping

Under the evaluation scheme established in the RFP, stationkeeping was the most important technical evaluation factor. The agency states that it evaluated PBI's proposal as "yellow" under this factor because the protester's proposed design failed to meet certain RFP provisions set

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<sup>2</sup>The list of discussion topics sent to PBI included the proposed location of the engineering control center (ECC).

forth in the RFP's circular of requirements (COR). The COR called for the development of integrated ship controls that would enable the proposed vessel to automatically stationkeep (hover) around a fixed point in an open seaway despite adverse current, wind and wave action while buoys were being deployed or retrieved. The COR required that this automatic stationkeeping function be met by using a computer integrated system of both visual and electronic methods which comprised the dynamic positioning system (DPS). Specifically, section 020-4.1 of the COR provided that:

"The DPS shall fix the position of the cutter to within a two meter accuracy (absolute) using a computer integrated system of both visual and differential electronic methods (including but not limited to LORAN, GPS, and radar), where available, with the position information continuously updated within 5 seconds of mark."

The agency questioned PBI's approach because the visual method PBI proposed as part of its DPS consisted of a "taut wire system" that was not computer integrated to the DPS. Despite the agency's discussion questions regarding this matter, PBI failed to adequately demonstrate how position information from its "taut wire system" would be "continuously updated within 5 seconds of mark" as required by the COR. The agency concluded that PBI's proposed DPS which relied primarily on electronic data (specifically, data from the global positioning system (GPS)<sup>3</sup>), demonstrated PBI's lack of understanding regarding the COR requirements for stationkeeping.

PBI admits that "it may have left some details regarding the collection and inputting of this secondary visual navigation data for later definitization during the Phase One contract," but expresses "surprise" that its proposal was downgraded so severely since it maintains that the visual navigational methods have only a marginal role in the full gamut of design considerations necessary to meet the stationkeeping requirements. In any event, PBI states that it addressed the issue of computer integration during negotiations and explained that visual data from its taut wire system could be input manually through a console keyboard. PBI does not explain how this method of inputting data would meet the COR requirement for continuous updating of information.

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<sup>3</sup>GPS is a government differential electronic satellite system being developed and deployed.

PBI maintains that the Coast Guard improperly limited its evaluation of the stationkeeping requirement to navigational methods and insists that the agency misunderstood PBI's "whole-ship" approach to meeting the stationkeeping requirements. According to the protester, its approach to this design objective involved the recognition that the ability of the proposed cutter to hover indefinitely within a fixed point is dependent upon the design choices involving the basic hull form, type and operating characteristics of the selected propulsion system, and a specially designed electronic system which ties all these design parameters together into a DPS. PBI's proposed design choices encompassed a hull form, propulsion system and control philosophy which, it asserts, not only met but exceeded the requirement to hover within a 10-meter radius. PBI states that it performed a computer simulation to prove that its proposed system will in fact be able to exceed the minimum hovering requirement set forth in the COR and argues that the agency overlooked the data it submitted and this resulted in PBI's innovative design being scored lower than it deserved.

PBI's arguments regarding its "whole ship" approach and the asserted capabilities of the ship fail to address the basis for which its proposal was downgraded. The Coast Guard found and, we have confirmed that, despite multiple discussions, PBI did not address how visual navigational data would be computer integrated into its proposed DPS to accommodate the COR performance requirements. While PBI may have performed tests showing that certain aspects of the COR requirements were exceeded, its proposal did not demonstrate the capability to determine where the cutter was in relation to a desired position through a computer integrated system of visual and electronic methods. Accordingly, the agency reasonably concluded that PBI's proposed system failed to meet the solicitation requirements.

## 2. Arrangements

PBI also protests the "yellow" rating its proposal received with regard to the technical evaluation factor, "arrangements." Under this factor, proposals were evaluated with regard to their proposed arrangement of space locations including: the pilot house; the engine room and major auxiliary spaces; and the engineering control center (ECC).

On August 20, 1990, the Coast Guard amended the RFP to require that the ECC be located "entirely within the watertight boundaries of the main machine space." PBI's initial proposal, submitted on October 10, failed to meet this requirement. Following discussions in which the agency identified this deficiency, PBI submitted its BAFO in which it proposed to place the ECC in the main machinery space;

however, PBI's BAFO also reduced the size of the ECC and did not include the main propulsion electrical power switchboard, the ship service switchboard, or the desk and bookcases--all of which the COR required. Accordingly, PBI's proposal was rated deficient with regard to "arrangements."

PBI acknowledges that, due to the type of propulsion system it selected, its proposal could not meet all the COR requirements regarding the ECC. PBI explains:

"PBI's design team considered that the final location of the ECC would have to be worked out in more detail once the Phase One contract was awarded . . . PBI reasonably believed that the Coast Guard would be willing to modify the ECC arrangement requirements once the parties were able to evaluate the issue in detail. . . ."

Since PBI acknowledges that the RFP requirements regarding the ECC would have to be modified in order for its proposal to comply, PBI is, in essence, challenging the RFP requirement that the ECC be located in the main machine space; however, PBI failed to question this requirement prior to submitting its proposal.

Our Bid Protest Regulations require that protests based on alleged improprieties apparent from the face of the solicitation be filed with our Office or the procuring agency prior to the time established for submission of proposals. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Here, the closing date for submission of proposals was October 10, 1990, nearly 2 months after the RFP amendment was issued. Since PBI did not raise this matter until after proposals were submitted and contracts awarded, this portion of its protest is dismissed as untimely.

### 3. Other Evaluation Factors

PBI also asserts that the agency improperly evaluated its proposal by failing to rate it "blue" (exceptional) under the "buoy handling" and "seakeeping" evaluation factors. Based on our review of PBI's proposal and the agency's evaluation of these factors, we find no basis to question the agency's evaluation. PBI's protest merely establishes that it disagrees with the agency's assessment. The fact that a protester disagrees with an agency's evaluation does not itself render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

## AGENCY'S EVALUATION SCHEME

PBI protests that the Coast Guard's application of the color-based evaluation scheme failed to recognize that PBI's technical proposal was equal, or nearly equal, to those of the successful offerors and, therefore, that the system failed to provide for a fair comparison of proposals. To support this argument, PBI created its own evaluation system by assigning numeric values to each of the color marks awarded by the agency. Specifically, PBI converted the agency's color-based evaluation system to the following numeric system: blue--100 points; green--75 points; yellow--65 points; and red--0 points.<sup>4</sup> Using the numeric system it created, PBI summed the total points it contends would or should have been awarded to each offeror under its system and concludes "it can readily be seen that PBI's total evaluated score was virtually tied with [one awardee's score], and was only a small margin behind [another awardee's score]."<sup>5</sup> Accordingly, PBI asserts that its proposal was improperly rejected.

This portion of PBI's protest essentially challenges the validity of the Coast Guard's color-based evaluation scheme. In this regard, we note that even numerical point scores, when used for proposal evaluation, are useful only as guides to intelligent decision-making and, generally, such guides do not mandate selection of a particular awardee since they reflect the disparate, subjective judgments of the evaluators. Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427; Ferguson-Williams, Inc., B-231827, Oct. 12, 1988, 88-2 CPD ¶ 344. Our Office has previously examined rating systems other than strict mathematical scoring and has recognized the validity of such systems, provided they give the selection official a clear understanding of the relative merit of the proposals. See, e.g., Dynamics Research Corp., B-240809, Dec. 10, 1990, 90-2 CPD ¶ 471; MAXIMUS, B-195806, Apr. 15, 1981, 81-1 CPD ¶ 285.

Here, PBI's argument based on the scoring system it created provides no basis for sustaining the protest. The evaluation system which PBI created was neither established

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<sup>4</sup>PBI also created a numeric system for quantifying the TET's evaluation of proposals, assigning various positive and negative point scores to the "strong points," "shortcomings," and "risk assessments" identified by the TET during its evaluation.

<sup>5</sup>Under its evaluation system, PBI contends the agency would or should have awarded one awardee 1,950 points; another awardee 1,820 points; another awardee 1,790 points; and PBI 1,790 points.

nor contemplated by the RFP. Further, PBI's system is inconsistent with the order of importance of evaluation factors established in the RFP. In converting the color marks to point scores, PBI assumed that all evaluation factors were equally weighted. That is, in calculating the total points it asserts would or should have been awarded, PBI assumed that a particular color rating under the most important technical evaluation factor (stationkeeping), converted to exactly the same number of points as a similar color rating under any of the less important evaluation factors. Accordingly, the evaluation system on which PBI bases its challenge of the agency's rating system is simply not valid.

#### OTHER ALLEGATIONS

PBI also protests that the Coast Guard's procurement officials were biased against PBI. Based on the fact that the SEB's report to the SSO failed to repeat all the specific evaluation comments made by the TET, PBI asserts that the report was prepared in a manner that intentionally downplayed the innovative nature of PBI's design and emphasized the positive aspects of the other offerors' proposals, and failed to present an accurate and objective picture of the relative strengths and weaknesses of the competing proposals.

We have reviewed the evaluators' worksheets, negotiation memorandum and the SEB report and find no basis to support PBI's allegation of bias. We will not attribute prejudicial motives to contracting officials on the basis of inference, supposition or unsupported allegations. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114. Here, the record contains no evidence that the Coast Guard's personnel were biased against PBI.

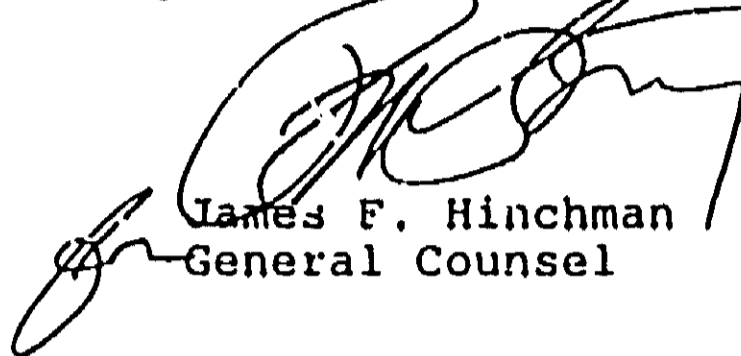
Finally, in filing its comments on the agency report, PBI alleged for the first time that the agency acted improperly in refusing to consider a portion of its proposal that exceeded the RFP's page limitation. In this regard, section L of the RFP specifically stated:

"The maximum number of pages allowed for each volume of the proposal shall be strictly observed. If proposals contain more than the specified limits, only the first pages, up to the limiting number for that volume will be evaluated."

It is well settled that offerors are bound to comply with an RFP's page limitation requirements. See, s.g., ITT Electron Technology Div., B-242289, Apr. 18, 1991, 91-1 CPD ¶ 383; Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58. In any event, PBI's assertions regarding this matter are not

timely raised. PBI received the agency report providing the basis for this portion of its protest on August 7, 1991, but failed to raise the matter with our Office until it submitted its comments on the agency report on August 23-- more than 10 working days later.<sup>6</sup> Accordingly, this portion of its protest is dismissed as untimely. 4 C.F.R. § 21.2(a)(2) (1991).

The protest is denied in part and dismissed in part.



James F. Hinchman  
General Counsel

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<sup>6</sup>PBI was granted a time extension for purposes of filing its comments; however, this extension did not waive the timeliness rules with regard to new bases for protest. Ebasco Constructors, Inc., et al., B-244406 et al., Oct. 16, 1991, 91-2 CPD ¶ \_\_\_\_.